

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 IN RE: NATIONAL) MDL No. 2804
5 PRESCRIPTION OPIATE)
6 LITIGATION) Case No.
7) 1:17-MD-2804
8 THIS DOCUMENT RELATES TO) Hon. Dan A. Polster
9 ALL CASES)
10)

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17 Videotaped Deposition of MATTHEW ROGOS,
18 held at Marcus & Shapira LLP, One Oxford
19 Centre, Suite 3500, Pittsburgh, Pennsylvania,
20 commencing at 1:09 p.m., on the above date,
21 before Michael E. Miller, Fellow of the
22 Academy of Professional Reporters, Registered
23 Diplomate Reporter, Certified Realtime
24 Reporter and Notary Public.

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Precision Trial

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5 VIDEOGRAPHER;

6 DEVYN MULHOLLAND,
Golkow Litigation Services

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2 MATTHEW ROGOS
3 February 22, 2019

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1 PROCEEDINGS

2 (February 22, 2019 at 1:09 p.m.)

3 THE VIDEOGRAPHER: We're now on
4 the record. My name is Devyn
5 Mulholland. I am the videographer for
6 Golkow Litigation Services. Today's
7 date is February 22nd, 2019. The time
8 is 1:09 p.m.

9 This video deposition is being
10 held in Pittsburgh, Pennsylvania in
11 the matter of National Prescription
12 Opiate Litigation. The deponent is
13 Matthew Rogos.

14 Counsel will be noted on the
15 stenographic record. The court
16 reporter is Mike Miller, and he will
17 now swear in the witness.

18 MATTHEW ROGOS,
19 having been duly sworn,
20 testified as follows:

21 EXAMINATION

22 BY MR. BARTON:

23 Q. All right. Mr. Rogos, my name
24 is Eric Barton. We met just before the
25 deposition. I am one of the attorneys

1 representing the plaintiffs in some
2 litigation involving the opioid epidemic, and
3 we're here to take your deposition today.

4 Have you ever had your
5 deposition taken?

6 A. No.

7 Q. Okay. I'll explain a little
8 bit about the process, and I know that you've
9 probably talked with counsel about the
10 process as well.

11 But first, do you understand
12 that you have just taken an oath the same as
13 if you were sitting in a courtroom in front
14 of a jury?

15 A. I do.

16 Q. Okay. And so the oath is to
17 tell the truth under penalty of perjury, and
18 you understand that, correct?

19 A. I do.

20 Q. Thank you.

21 The -- because we have a court
22 reporter who will be making a transcript of
23 what we say today, I will need you to give
24 audible answers and try not to interrupt me
25 as I try not to interrupt you.

1 Is that okay?

2 A. That's fine.

3 Q. All right. If you don't
4 understand a question that I ask, please feel
5 free to tell me so and ask me to try to
6 clarify it for you. Is that all right?

7 A. That's fine.

8 Q. Okay. And you are represented
9 today in this deposition?

10 A. I am.

11 Q. Okay. And your counsel is here
12 with you, correct?

13 A. That's correct.

14 Q. Okay. Who is your current
15 employer?

16 A. ABARTA Coca-Cola.

17 Q. Okay. And how long have you
18 worked for Coca-Cola?

19 A. Since May of 2015.

20 Q. We're here today to ask you
21 questions primarily about your work for Giant
22 Eagle's HBC Service Company.

23 Do you understand that?

24 A. I do.

25 Q. When did you work for Giant

1 Eagle's HBC Service Company?

2 A. I worked for them from the time
3 period approximately November 2013 to May of
4 2015.

5 Q. Okay. Let me hand you -- let's
6 just use this one as Exhibit 1.

7 (HBC-Rogos Deposition Exhibit 1
8 marked.)

9 BY MR. BARTON:

10 Q. Okay. I've marked a document
11 as Exhibit 1, I'm handing it to you. I'll
12 represent this document Exhibit 1 has an
13 identifying number, our own identifying
14 number at the top that's P-GEN-00145.

15 But does this appear to be a
16 r?sum? of yours that summarizes your
17 education and experience?

18 A. Yes.

19 Q. Is this something that you
20 prepared?

21 A. It is.

22 Q. Okay. And does it fairly and
23 accurately summarize your education and work
24 history?

25 A. It does.

1 Q. When you first started working
2 for Giant Eagle's HBC Service Company, was
3 that in the title of distribution operations
4 manager?

5 A. In 2013, yes.

6 Q. Okay. And you retained that
7 role for the entirety of your tenure with
8 HBC?

9 A. Until I left, yep.

10 Q. Okay. And so prior to working
11 for HBC, you had been working for other
12 divisions or subsidiaries of Giant Eagle; is
13 that right?

14 A. That's correct.

15 Q. And those are listed there on
16 the second page of your r?sum??

17 A. Uh-huh.

18 Q. During those positions, from
19 2003 up until November of 2013, had you --
20 had you had any experience or training in any
21 of those positions dealing with controlled
22 substances or pharmaceuticals?

23 A. Prior to getting to HBC, you
24 mean?

25 Q. Correct.

1 A. No.

2 Q. Okay. When you left HBC in May
3 of 2015, was that -- was that a voluntary
4 decision on your part?

5 A. It was.

6 Q. The role of distribution
7 operations manager, did you have essentially
8 kind of overall supervisory responsibility
9 for all operations of the warehouse?

10 A. Yes.

11 Q. And your counsel almost
12 objected. That reminded me just as a process
13 point. There may be some objections to
14 questions that I ask today, and if there are,
15 unless your counsel instructs you not to
16 answer, you understand that you will go ahead
17 and try to answer my question?

18 A. I'll try.

19 Q. Okay. So the operations of the
20 HBC warehouse, as I understand it, it was
21 only a portion of the overall warehouse that
22 was identified and specific to the
23 pharmaceutical distribution piece, correct?

24 A. That's correct.

25 Q. And within that pharmaceutical

1 distribution piece, there was also a separate
2 defined area that was secured for controlled
3 substances; is that true?

4 A. It is.

5 Q. Okay. But in terms of the
6 entire HBC warehouse, the pharmaceutical and
7 controlled substances part of that warehouse
8 was a relatively small part of the entire
9 warehouse; is that true?

10 A. That's correct.

11 Q. Okay. I asked you if you'd had
12 any, I think, training or experience prior to
13 HBC with -- dealing with distribution of
14 pharmaceuticals or controlled substances, and
15 you said you had not, correct?

16 A. That's correct.

17 Q. Do you recall any education --
18 and I'll ask you a little bit about your
19 education here in a second, but had you had
20 any education concerning Federal laws or
21 regulations concerning controlled substances?

22 MR. KOBRIN: Object to form.

23 Do you mean formal education or job
24 training, anything?

25 MR. BARTON: Well, yeah. I

1 mean, really anything.

2 BY MR. BARTON:

3 Q. Anything you would consider
4 education, whether it be formal education or
5 education through job training or anything.

6 A. Prior to getting to HBC?

7 Q. Correct.

8 A. No.

9 Q. Let's -- let me ask a little
10 bit about your education quickly, just -- it
11 appears you graduated from Penn State with a
12 Bachelor of Science in marketing; is that
13 right?

14 A. It is.

15 Q. With a minor in business
16 logistics?

17 A. Uh-huh.

18 Q. And that was 1997?

19 A. That's correct.

20 Q. Okay. And then after entering
21 the workforce, it appears you got an M.B.A.
22 from University of Pittsburgh, correct?

23 A. I did.

24 Q. That was in 2008?

25 A. It was.

1 Q. Okay. So did you leave work to
2 be a full-time student in the M.B.A., or were
3 you able to do that while working at Giant
4 Eagle?

5 A. I took night classes while
6 working at Giant Eagle.

7 Q. Okay. In your role as
8 distribution operations manager, did you
9 directly supervise managers underneath you,
10 so to speak?

11 A. I did.

12 Q. And how many managers were
13 under you at HBC?

14 MR. KOBIN: Object to form.

15 BY MR. BARTON:

16 Q. How many managers did you
17 directly supervise?

18 A. I'm trying to think. I think
19 there was a minimum of three.

20 Q. Did any of those managers have
21 exclusive responsibilities to the
22 pharmaceutical area of the warehouse?

23 A. Not that I can remember.

24 Q. Okay. Yeah, I just wondered
25 if -- if there was someone who kind of had

1 that role who you supervised, but you don't
2 recall that being the way managerial
3 responsibilities were divided underneath you?

4 A. No.

5 Q. Okay. Let me just ask you
6 about the physical setup for you at the HBC
7 warehouse.

8 I assume your -- you spent your
9 days at the warehouse, correct?

10 A. That's correct.

11 Q. And did you have an office
12 there on site?

13 A. I did.

14 Q. And was that an office that,
15 you know, kind of had walls and a door, or
16 was it just an area?

17 A. It was a walls-and-door office.

18 Q. Okay. Like a full-on office?

19 A. Full-on office.

20 Q. All right. And you had a
21 computer?

22 A. I did.

23 Q. I assume you had an office
24 phone?

25 A. I did.

1 Q. The computer that you had, was
2 that like a desktop computer with a monitor,
3 or did you just use a laptop?

4 A. I can't recall. I think it
5 might have been a laptop, but I can't recall.

6 Q. Okay. I assume, but you tell
7 me if -- otherwise, that your computer was
8 linked or networked to a company network of
9 some kind?

10 A. I would assume, yes.

11 Q. Yeah. And for e-mail
12 communications, did you occasionally e-mail
13 people through the course of your work?

14 A. I did.

15 Q. And was that -- if you recall,
16 did you use -- did you and the company use an
17 Outlook, Microsoft Outlook-based system for
18 e-mail, or was it some other e-mail provider,
19 if you recall?

20 A. I believe it was Outlook.

21 Q. And likewise, for word
22 processing, if you worked on documents and
23 drafted or edited and sent documents, word
24 processing, did you use Microsoft Word there,
25 do you recall?

1 A. Yes.

2 Q. Okay. Was there -- in addition
3 to any e-mails that you might use in the
4 course of your work, was there also a company
5 intranet, if you will, where you could do
6 instant messaging directly to other employees
7 without using e-mail?

8 A. I believe there was.

9 Q. Okay. Is that -- do you know
10 what -- do you know what that -- did it have
11 a name?

12 A. I don't recall.

13 Q. Okay. Was that something that
14 you often used, if you recall?

15 A. I don't think I used it too
16 much.

17 Q. Was there any other way,
18 besides direct face-to-face conversations
19 with people or using the office telephone or
20 using e-mail or the instant messaging
21 function, if you used that, were there any
22 other ways that you communicated with other
23 people at HBC?

24 A. I think we communicated with
25 supervisors over a walkie-talkie system.

1 Q. Okay. And so that -- that was
2 just for kind of talking to people who might
3 be in another part of the warehouse far
4 enough away that you can't have a
5 face-to-face conversation, but you're just
6 having kind of an immediate communication
7 with them that way?

8 A. That's correct.

9 Q. All right. Any other ways you
10 can think of? I'm just trying to understand
11 what all those were.

12 A. I think there might have been
13 an intercom, so if we had to call somebody to
14 the office there was an intercom that would
15 communicate a message across the warehouse.

16 Q. Okay. How many offices like
17 yours were there at the HBC warehouse?

18 MR. KOBRIN: Object to form.

19 A. You mean where other people
20 would also perform work that had walls and
21 doors?

22 BY MR. BARTON:

23 Q. Yeah.

24 A. Okay. My recollection, one,
25 two, three, four -- we had four on the same

1 kind of platform and location where I was,
2 and then there was -- there were two others
3 in the center of the warehouse that served as
4 an inventory warehouse office.

5 Q. Okay. And who were the people
6 who had the other four -- or the other three,
7 I guess. There were four you said in your
8 area.

9 A. Uh-huh.

10 Q. Who were the other people and
11 like, kind of what were their titles? Just
12 getting a sense of who --

13 A. We had a maintenance supervisor
14 who had his own office. There was an office
15 administrator. Our HR department had an
16 office and our payroll support had an office.
17 And I recollect we also had -- I want to say
18 a receptionist. She had an office as well.

19 MR. BARTON: Okay.

20 (HBC-Rogos Deposition Exhibit 2
21 marked.)

22 BY MR. BARTON:

23 Q. I'm going to hand you a series
24 of documents and just ask you questions about
25 them, and that's how we'll largely proceed

1 here.

2 First of all, I'll hand you
3 what we marked as Exhibit 2. I may not have
4 many questions about this. This is a
5 document that was produced by HBC. The
6 metadata associated with the document on the
7 first page seems to suggest it was created
8 perhaps before you came to HBC, in March of
9 2013.

10 So I point that out only to
11 suggest -- my first question about this is,
12 is this a document that you recognize or
13 recall seeing?

14 MR. KOBRIN: Do you know who's
15 the custodian on it?

16 MR. BARTON: I don't.

17 MR. KOBRIN: You don't, okay.

18 MR. BARTON: If it's not
19 listed, and it isn't, I don't know who
20 it is.

21 MR. KOBRIN: So it may not be
22 from his custodial file either. He
23 may have never seen it.

24 MR. BARTON: Yeah, which is
25 really my question. And if he hasn't,

1 then I don't have any other questions.

2 A. This is the first time I've
3 seen this.

4 BY MR. BARTON:

5 Q. Okay. If you had authored this
6 or edited it or something, I'd have more
7 questions about it, but if you've never seen
8 it before, I don't need to have you answer
9 any other questions about it because you
10 haven't seen before. Okay.

11 And from looking at that real
12 quick, you can't discern who may have
13 authored it, or can you, just based on having
14 worked at HBC?

15 MR. KOBIN: If you can tell.

16 You don't need to speculate.

17 A. Yeah, unless there's a name at
18 the end, I can't tell.

19 MR. BARTON: Okay. That's
20 fine.

21 (HBC-Rogos Deposition Exhibit 3
22 marked.)

23 BY MR. BARTON:

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25 [REDACTED]

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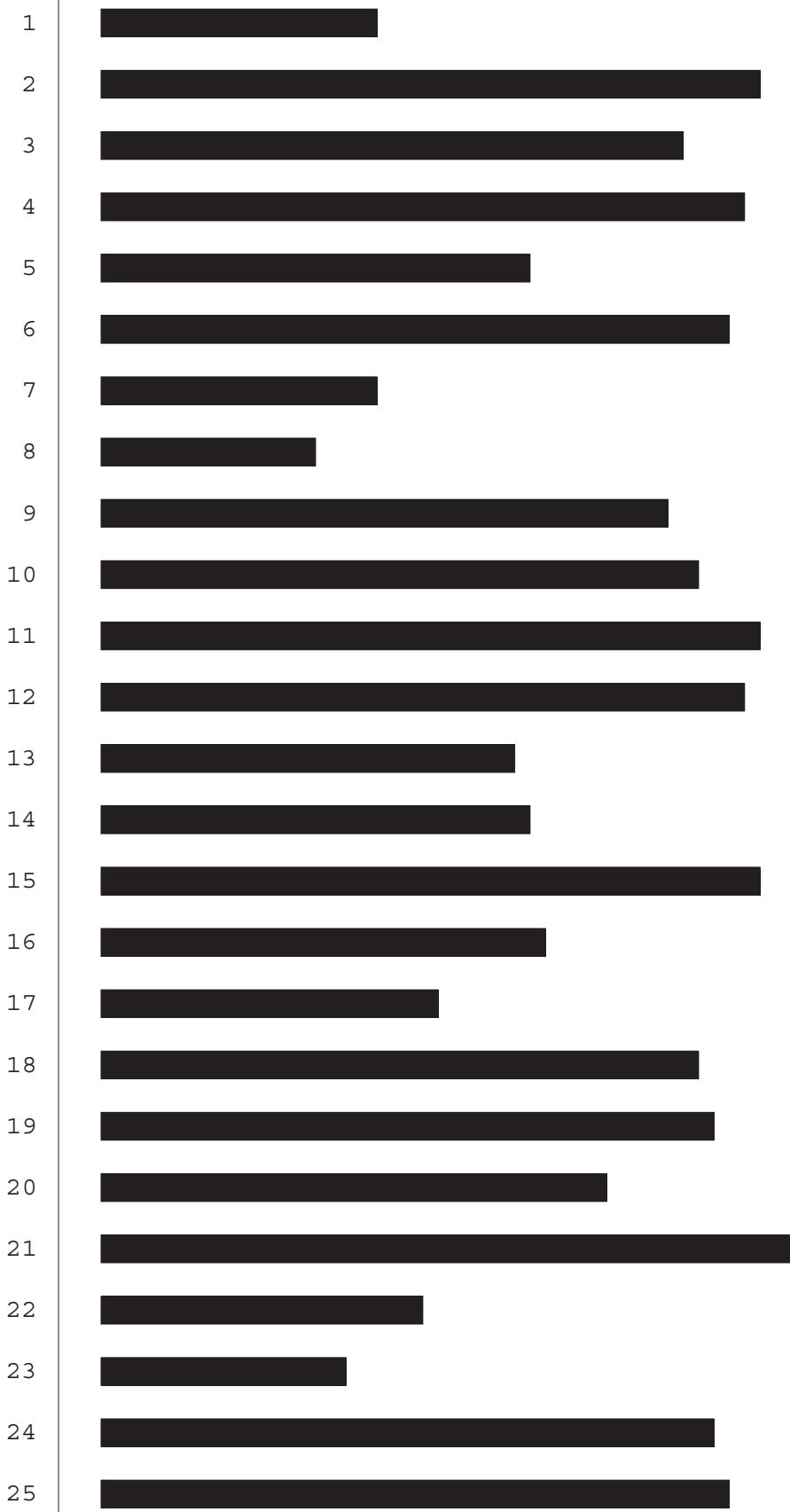
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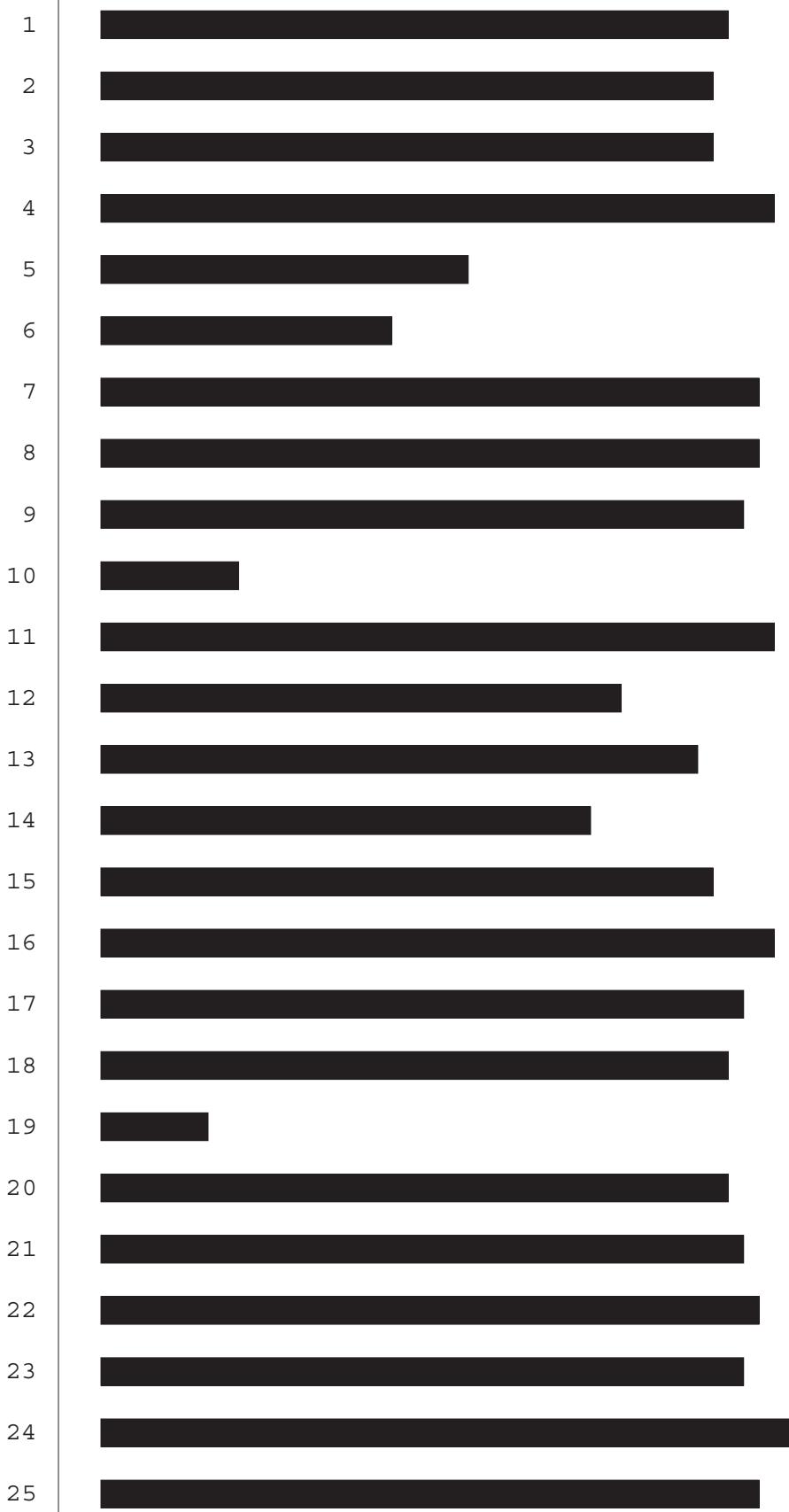
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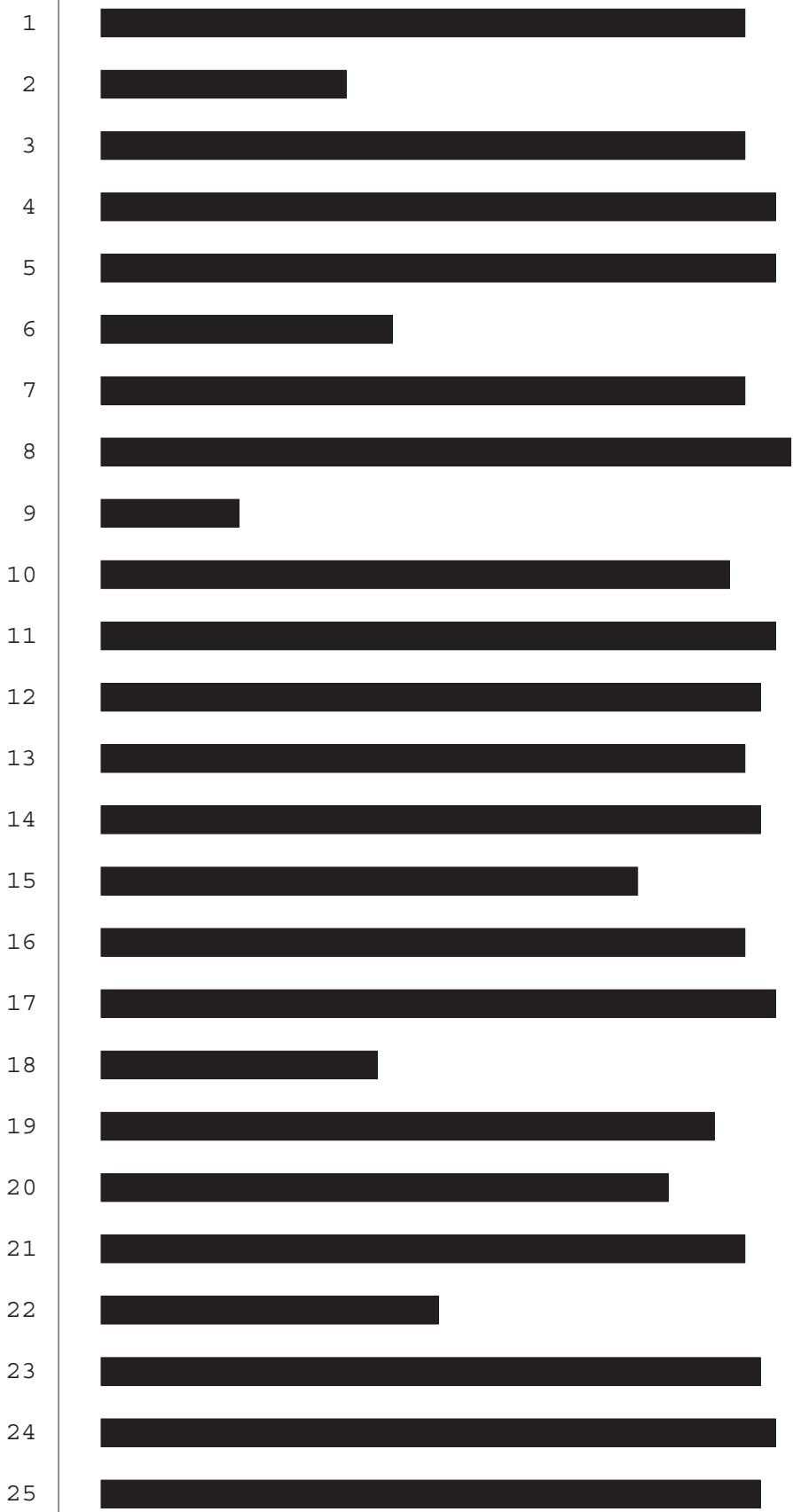
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19 MR. KOBRIN: Do you want to
20 take a break? We've been going about
21 an hour, an hour ten.

22 MR. BARTON: Yeah, that's fine.
23 We can do it.

24 THE VIDEOGRAPHER: Off the
25 record at 2:12 p.m.

3 THE VIDEOGRAPHER: We're back
4 on the record at 2:27 p.m.

5 BY MR. BARTON:

6 Q. Okay. Mr. Rogos, a few more
7 questions about Exhibit 6 that you have in
8 front of you.

A horizontal bar chart consisting of 25 black bars of varying lengths. The bars are arranged vertically from top to bottom, corresponding to the numbers 9 through 25 listed on the left. The length of each bar represents a value for that specific number. Item 9 has the longest bar, followed by items 11, 12, 13, 15, 18, 19, 23, and 24, which all have very long bars. Item 25 has the shortest bar.

Item Number	Approximate Bar Length (relative scale)
9	Very Long
10	Long
11	Very Long
12	Very Long
13	Very Long
14	Medium-Long
15	Very Long
16	Medium
17	Medium-Long
18	Very Long
19	Very Long
20	Medium
21	Medium-Short
22	Medium-Long
23	Very Long
24	Very Long
25	Short

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1 A. Myself personally?

2 Q. Yes.

3 A. No.

4 Q. Okay. Did -- by this time of

5 August of 2014, do you recall having had any

6 role in reviewing this inventory control

7 policy and, you know, approving it or

8 anything like that, or was it just a

9 preexisting policy that was in your set of

10 policies?

11 A. It was a preexisting policy --

12 Q. Okay.

13 A. -- that we were using.

14 Q. Okay. So it was -- but as part

15 of the VAWD certification process, do you

16 then recall taking this policy and, you know,

17 adding to it or revising it consistent with

18 VAWD's expectations?

19 MR. KOBIN: Object to form.

20 A. What I recall is the inventory

21 policy that was in the library of SOPs was in

22 a different format than VAWD -- the VAWD

23 application asked us to put the policies in.

24 As we transferred the

25 information from our previous policies into

1 the format, there might have been some edits
2 that, as a group, the pharmacy key team, if
3 we had questions amongst us, we would ask to
4 see how we wanted to, I guess, update the
5 policy, or if there were things in the VAWD
6 checklist that we needed to ensure that were
7 in the policies to get the certification, we
8 needed to put those in.

9 BY MR. BARTON:

10 Q. Okay. So as of August of 2014,
11 looking kind of at the effective date shown
12 here for this policy on this document, on
13 Exhibit 7, as of -- as of August 1st of 2014,
14 do you recall having directed at HBC that
15 there be any training of HBC employees on how
16 one might identify an order from a pharmacy
17 of controlled substances as suspicious?

18 MR. KOBIN: Object to form.

19 A. What employees?

20 BY MR. BARTON:

21 Q. Any. Anyone at the warehouse,
22 I guess. Anyone under your supervision
23 ultimately.

24 A. I don't recall any specific
25 training. There were employees that were in

1 place prior to my arrival at HBC that might
2 have gotten training.

3 Q. Okay. Do you recall whether,
4 at HBC at the time we're talking about now,
5 in 2014, was there like a learning management
6 system for employees to get all kinds of
7 training that they may need for their jobs?

8 MR. KOBRIN: Object to form.

9 A. I can't recall.

10 BY MR. BARTON:

11 Q. Okay. You understand what I'm
12 referring to, though, in terms of like an
13 LMS, learning management system, for employee
14 training? Is that something you have had
15 familiarity with in your career?

16 A. It is.

17 Q. And one of the things that an
18 LMS system can do if an employer sets it up
19 this way is to have training for its
20 employees, for example, on policies and
21 procedures, correct?

22 A. I would assume, yes.

23 Q. Okay. But as you sit here, you
24 don't recall whether that existed in that --
25 whether that functionality existed in HBC at

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1 identify if a certain pharmacy within our
2 Giant Eagle system was ordering over -- or I
3 guess overordering a certain prescription.

4 I know that they did monitor
5 that and would send out monthly reports on
6 thresholds to us if any store was over the
7 threshold.

8 Q. Okay. So there was a company
9 system, what you're referring to, that you
10 understood was in place to be monitoring for
11 orders that somehow were flagged by the
12 system as potentially suspicious?

13 A. Correct.

14 Q. Based on quantity or frequency
15 or size or anything that the system might be
16 flagging?

17 A. I don't know what the specifics
18 were on the flags, but yes.

19 Q. Right. You didn't set up that
20 system to kind of put in whatever parameters
21 it had, correct?

22 A. No.

23 Q. So that -- and my question was
24 really just about what's -- what was in this
25 written policy as of this point in time

1 that -- none of that that you've just
2 described, the companywide system or any
3 other criteria that employees might use for
4 identifying an order of suspicious -- an
5 order as suspicious, that's not -- that's not
6 explained in this document, correct?

7 A. No.

8 Q. Okay. What this document does
9 do is it addresses how HBC intended to
10 respond if it identified or suspected an
11 order as suspicious?

12 MR. KOBRIN: Object to form.

13 A. That's correct.

14 MR. BARTON: Okay.

15 (HBC-Rogos Deposition Exhibit 8
16 marked.)

17 BY MR. BARTON:

18 Q. I'm handing you Exhibit 8.
19 Exhibit 8 is a multiple-page document
20 starting with page Bates number
21 HBC_MDL00132908; is that correct?

22 A. Yes.

23 Q. And the last page of this
24 exhibit, Bates HBC_MDL00132924; is that
25 right?

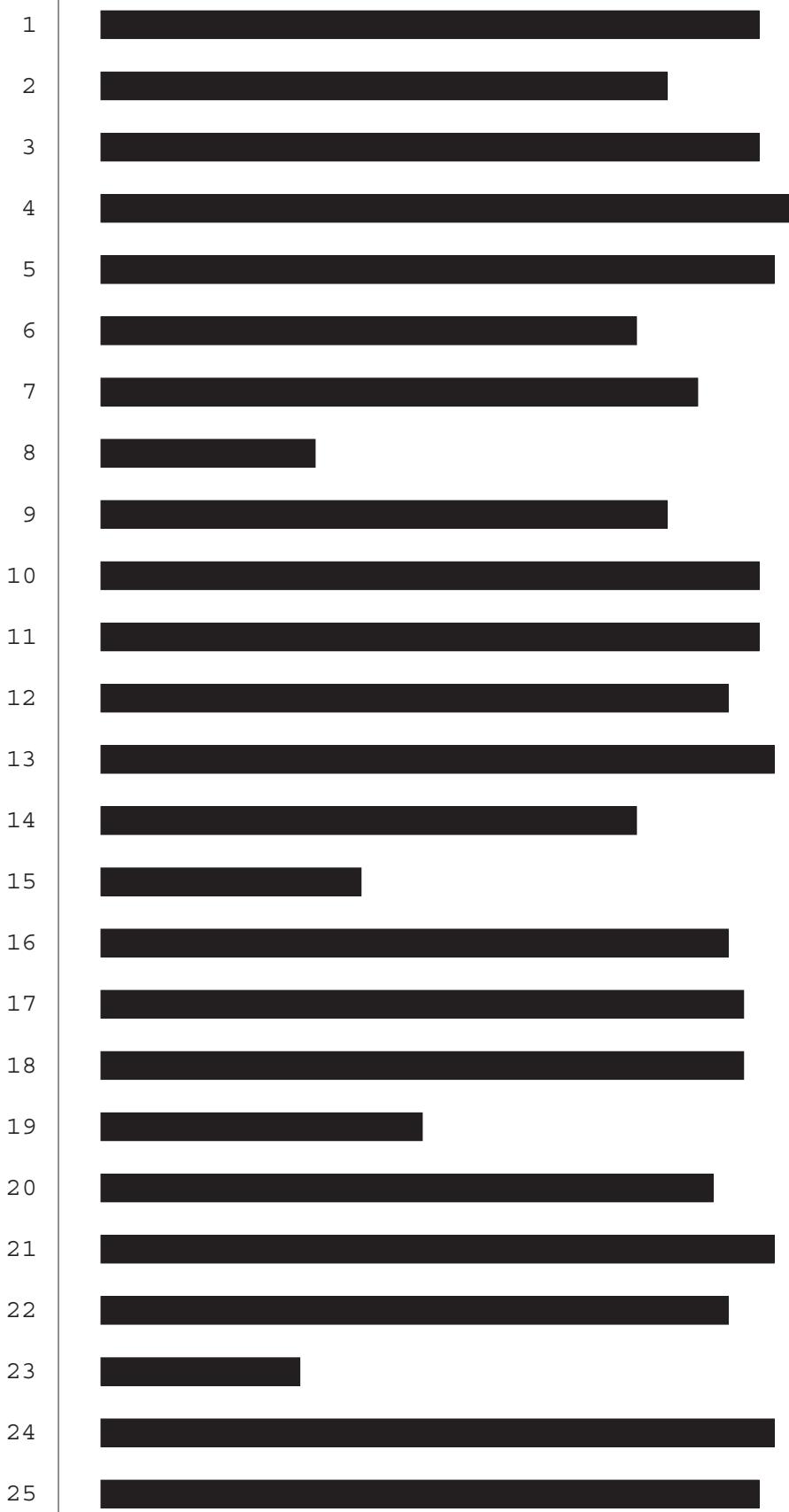
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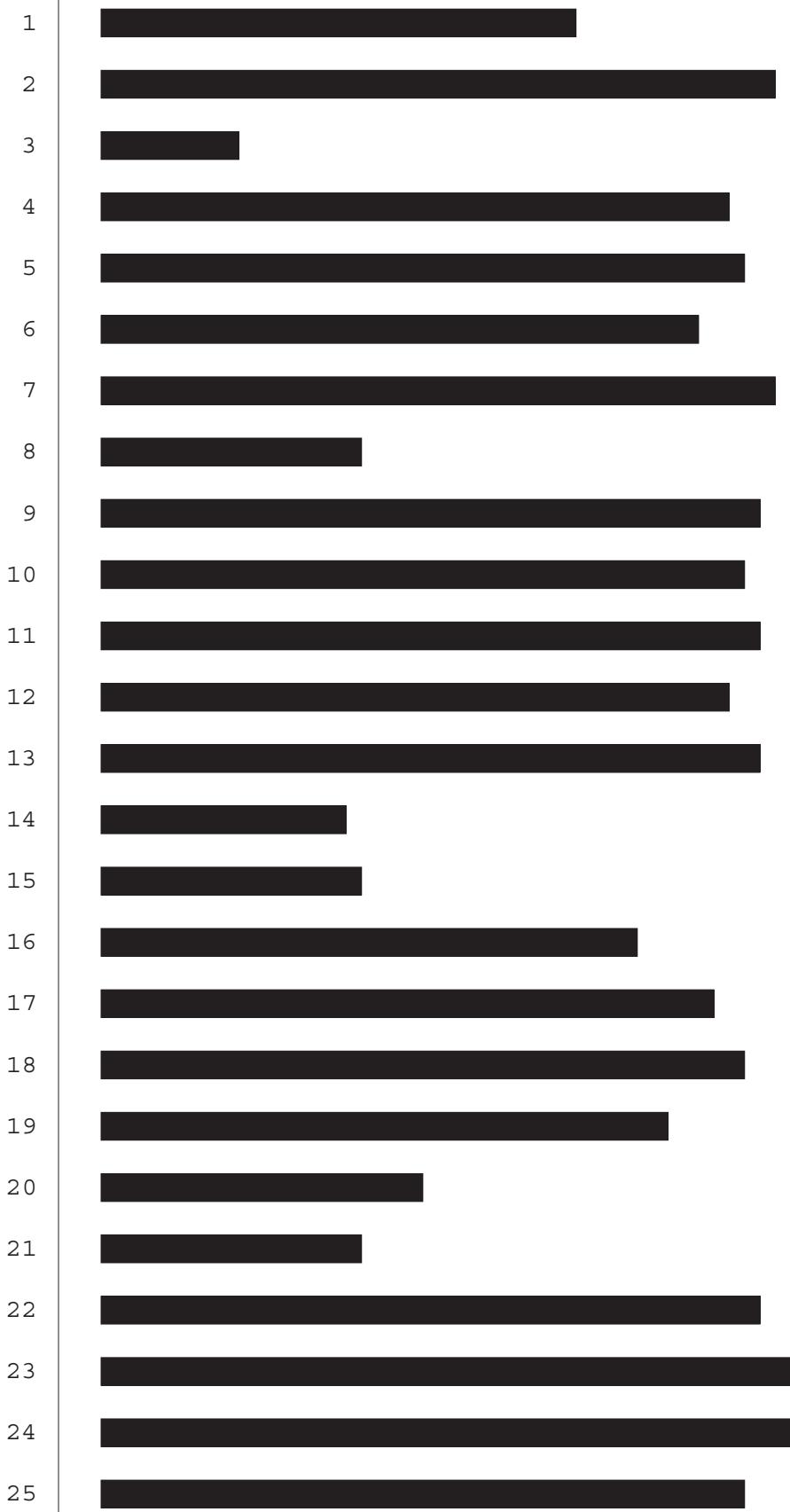
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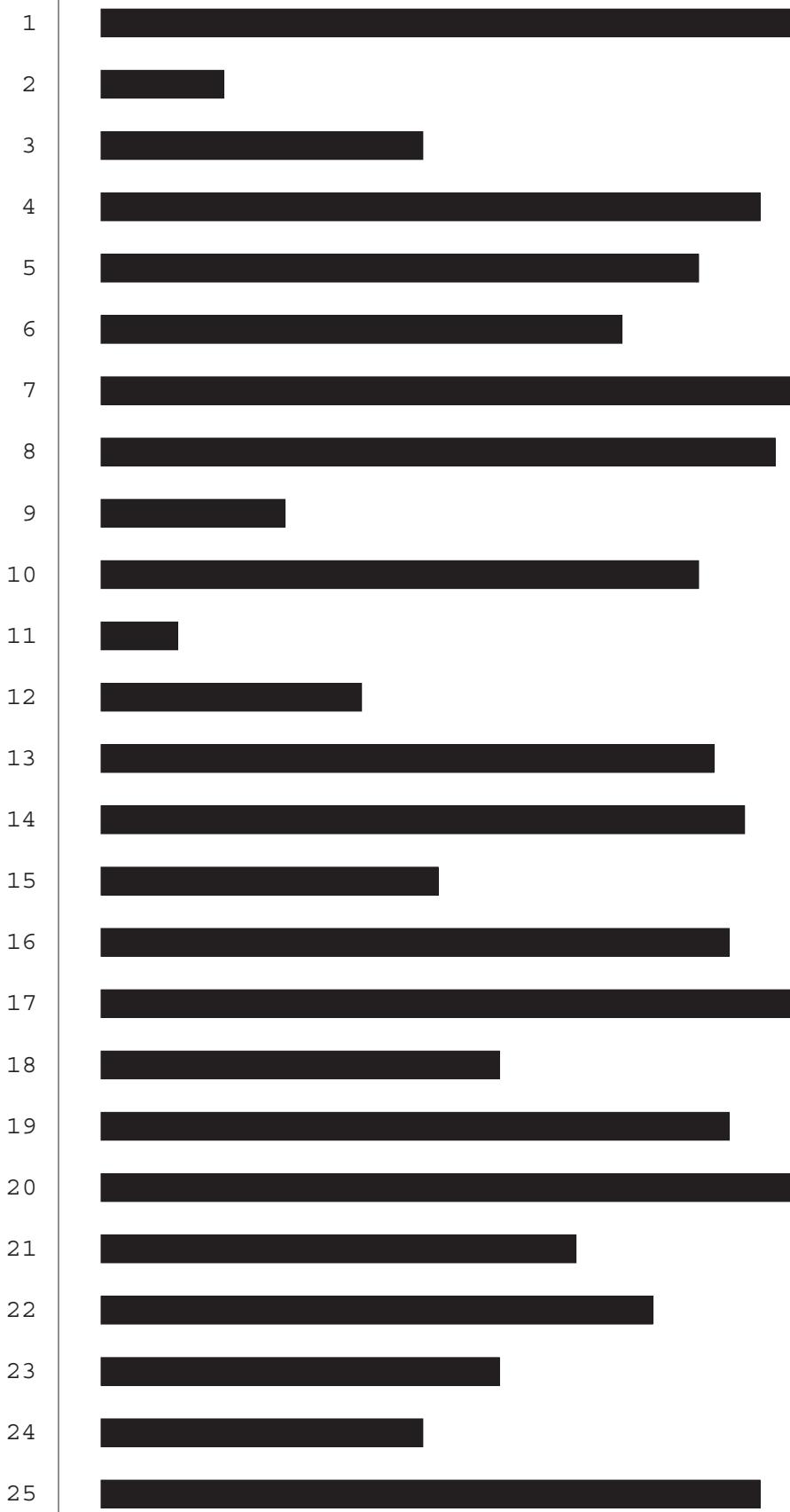
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21 MR. KOBRIN: You want to take
22 another break? We're at about two
23 hours.

24 MR. BARTON: Yeah, we can do
25 that.

1 THE VIDEOGRAPHER: Off the
2 record at 3:35 p.m.

3 (Recess taken, 3:35?p.m. to
4 4:08?p.m.)

5 THE VIDEOGRAPHER: We're back
6 on the record at 4:08 p.m.

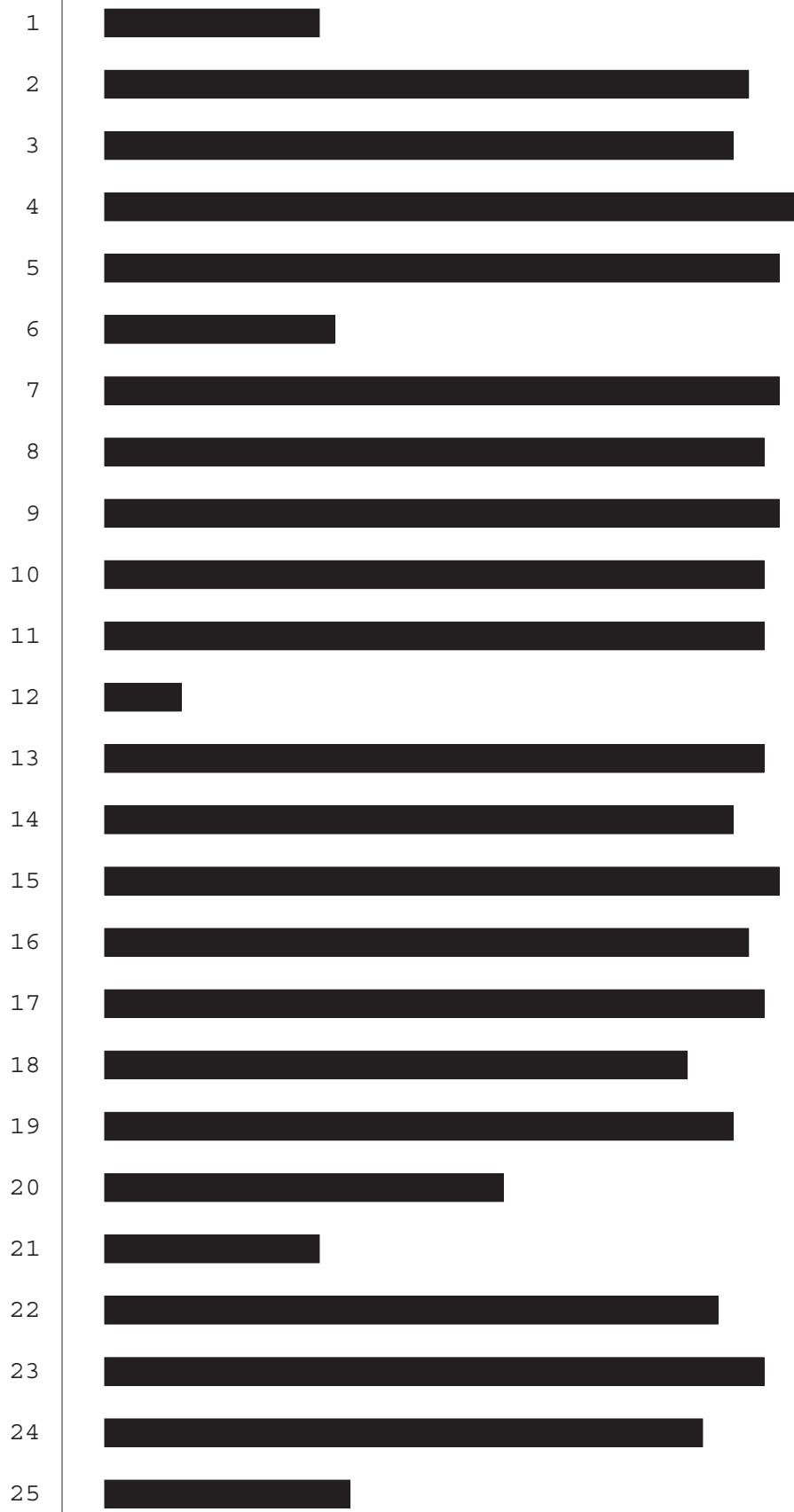
7 BY MR. BARTON:

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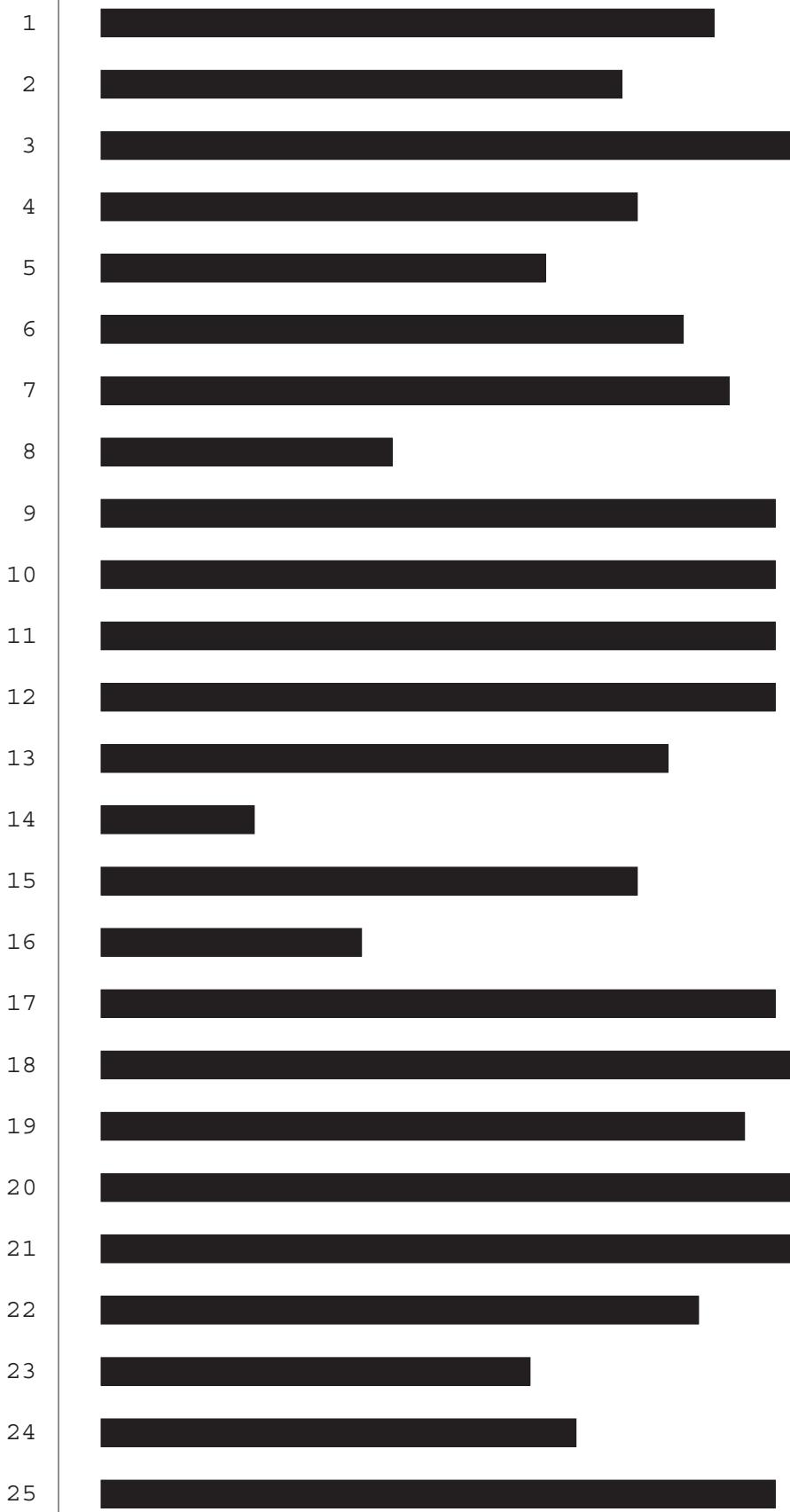
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23 MR. BARTON: Okay. Give me --
24 let's just take a very short break. I
25 think I'm done, but let me just make

1 sure.

2 THE VIDEOGRAPHER: Off the
3 record at 4:30 p.m.

4 (Recess taken, 4:30 p.m. to
5 4:40?p.m.)

6 THE VIDEOGRAPHER: We're back
7 on the record at 4:40 p.m.

8 MR. BARTON: Mr. Rogos, I
9 appreciate your time today, and I
10 don't have any further questions.

11 THE WITNESS: Thank you.

12 EXAMINATION

13 BY MR. KOBRIN:

14 Q. Mr. Rogos, I just have a couple
15 of follow-up questions for you.

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

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1 A. My understanding, yes, uh-huh.

2 Q. There -- was there ever, during
3 the time that you were director of warehouse
4 operations, was there ever any specific
5 training that you directed or conducted of
6 your employees on suspicious order
7 monitoring?

8 A. Not that I did.

9 Q. Okay. Did it ever occur? I
10 mean, apart from whether you actually did the
11 training, did you -- do you know whether your
12 employees ever got training on the specifics
13 of suspicious order monitoring while you were
14 director of warehouse operations?

15 A. No.

16 Q. Okay. And I think you've
17 testified there wasn't, to your recollection,
18 or at least you're not able to say there was,
19 an LMS training system where it would be
20 documented somewhere that every employee was
21 trained on these policies, correct?

22 A. I'm not aware of that.

23 Q. Okay. After -- after this
24 policy was revised to include the suspicious
25 order criteria that counsel was just pointing

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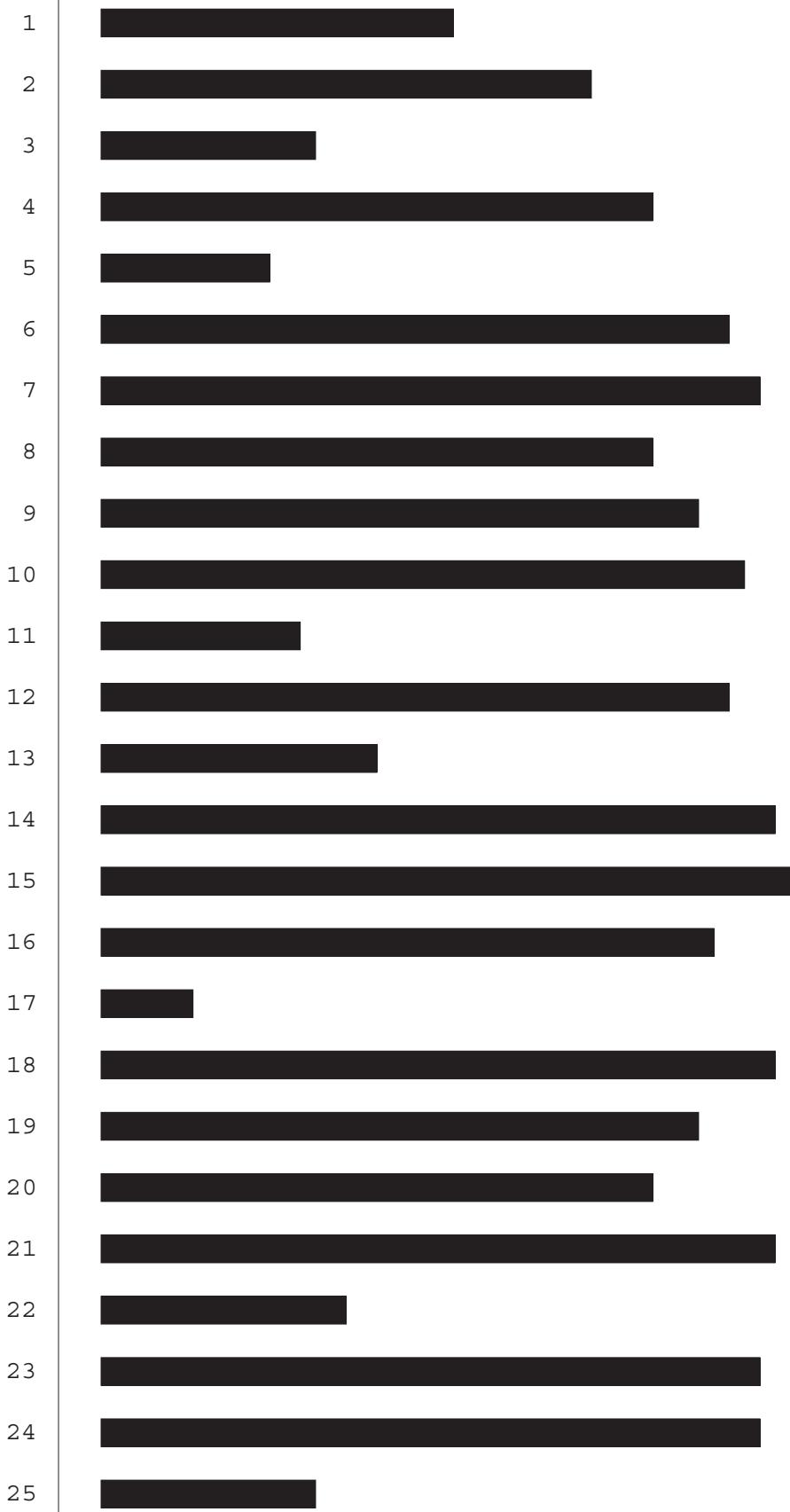
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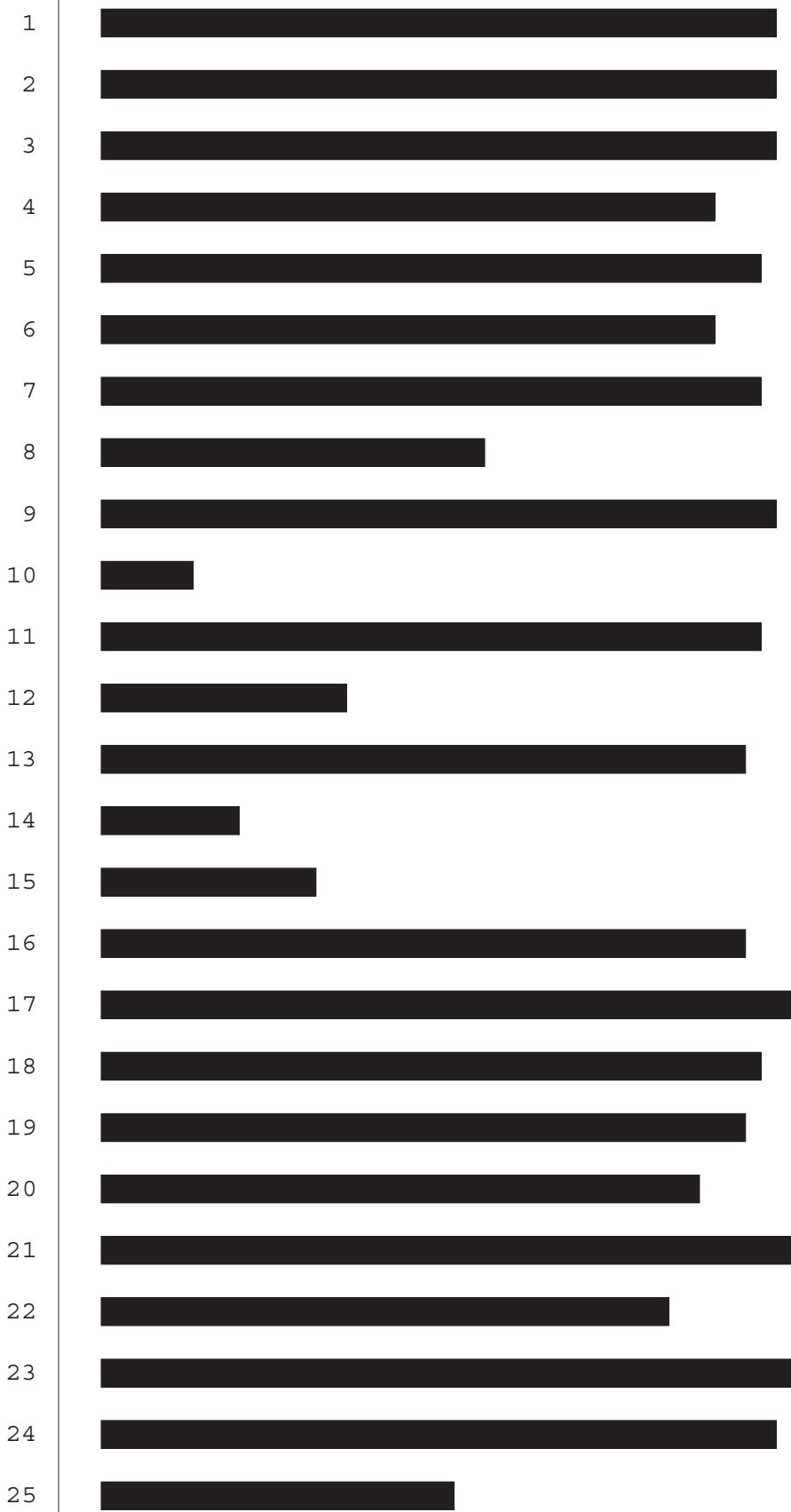
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20 MR. BARTON: Nothing further.

21 THE VIDEOGRAPHER: This
22 concludes this deposition. The time
23 is 5:02 p.m. Off the record.

24 (Proceedings recessed at
25 5:02 p.m.)

1 CERTIFICATE

2 I, MICHAEL E. MILLER, Fellow of
3 the Academy of Professional Reporters,
4 Registered Diplomate Reporter, Certified
5 Realtime Reporter, Certified Court Reporter
and Notary Public, do hereby certify that
prior to the commencement of the examination,
MATTHEW ROGOS was duly sworn by me to testify
to the truth, the whole truth and nothing but
the truth.

7 I DO FURTHER CERTIFY that the
8 foregoing is a verbatim transcript of the
9 testimony as taken stenographically by and
before me at the time, place and on the date
hereinbefore set forth, to the best of my
ability.

10 I DO FURTHER CERTIFY that pursuant
11 to FRCP Rule 30, signature of the witness was
12 not requested by the witness or other party
before the conclusion of the deposition.

13 I DO FURTHER CERTIFY that I am
14 neither a relative nor employee nor attorney
15 nor counsel of any of the parties to this
action, and that I am neither a relative nor
16 employee of such attorney or counsel, and
that I am not financially interested in the
action.

17

18

19 MICHAEL E. MILLER, FAPR, RDR, CRR
Fellow of the Academy of Professional Reporters
NCRA Registered Diplomate Reporter
NCRA Certified Realtime Reporter
Certified Court Reporter

21

Notary Public
My Commission Expires: 7/9/2020

23

Dated: February 24, 2019

24

25

1 INSTRUCTIONS TO WITNESS

2

3 Please read your deposition over
4 carefully and make any necessary corrections.

5 You should state the reason in the
6 appropriate space on the errata sheet for any
7 corrections that are made.

8 After doing so, please sign the
9 errata sheet and date it.

10 You are signing same subject to
11 the changes you have noted on the errata
12 sheet, which will be attached to your
13 deposition.

14 It is imperative that you return
15 the original errata sheet to the deposing
16 attorney within thirty (30) days of receipt
17 of the deposition transcript by you. If you
18 fail to do so, the deposition transcript may
19 be deemed to be accurate and may be used in
20 court.

21

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1 ERRATA

2 PAGE LINE CHANGE

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4 REASON: _____

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25

1 ACKNOWLEDGMENT OF DEPONENT

2

3 I, MATTHEW ROGOS, do hereby
4 certify that I have read the foregoing pages
5 and that the same is a correct transcription
6 of the answers given by me to the questions
therein propounded, except for the
corrections or changes in form or substance,
if any, noted in the attached
Errata Sheet.

7

8

9

10

11

MATTHEW ROGOS

DATE

12

13

14

Subscribed and sworn to before me this

15

_____ day of _____, 20 _____.
My commission expires: _____

16

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Notary Public

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LAWYER'S NOTES

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